

UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD

KAREN M. RYAN,  
Appellant,

v.

OFFICE OF PERSONNEL MANAGEMENT,  
Agency.  
(CSF 1 836 928)

DOCKET NUMBER  
PH08318910531

DATE: JUN 19 1991

Karen M. Ryan, Hooversville, Pennsylvania, pro se.

Bruce Hughes, Washington, D.C., for the agency.

BEFORE

Daniel R. Levinson, Chairman  
Antonio C. Amador, Vice Chairman  
Jessica L. Parks, Member

OPINION AND ORDER

The appellant has petitioned for review of an initial decision, issued on December 11, 1989, that sustained a reconsideration decision by the Office of Personnel Management (OPM), finding that she was not entitled to a lump-sum benefit. For the reasons discussed below, we DENY the appellant's petition because it does not meet the criteria for review set forth at 5 C.F.R. § 1201.115.

BACKGROUND

The appellant timely appealed from OPM's reconsideration decision denying her application for a lump-sum benefit in

connection with the death of her father, Bruno J. Calisti. Although the deceased had executed a designation-of-beneficiary form naming the appellant as a beneficiary of such benefits four days prior to his death, OPM did not receive this document until after Mr. Calisti's death. In his initial decision, the administrative judge determined that the appellant did not qualify for a lump-sum benefit because the statute, 5 U.S.C. § 8342, precludes OPM from honoring a designation of beneficiary if it is not received by OPM prior to the individual's death. The initial decision notified the appellant that it would become the Board's final decision on January 15, 1990, unless a petition for review was filed with the Board by that date.

The appellant filed a petition for review on January 23, 1990. The Clerk of the Board notified the appellant that the petition was deficient, in that it was not served on OPM, and that it was untimely filed. The Clerk's notice afforded the appellant an opportunity to correct the deficient petition for review, and advised her that the corrected petition must be accompanied by a motion for waiver of the time limit and an affidavit or statement signed under penalty of perjury, which must demonstrate good cause for the untimely filing. Review File (R.F.), Tab 2.

The appellant timely corrected the deficiencies noted by the Clerk. In her motion for waiver of the time limit, she explained that she had mistakenly understood the notice in the initial decision to say that, if she disagreed with the

initial decision, all she had to do was to write a letter to the administrative judge asking his office to review it. R.F., Tab 3. She further adduced evidence showing that she had sent such a letter to the administrative judge on January 9, 1990, within the period for filing a timely petition for review, but that the letter was not returned to her until after the deadline had passed. *Id.*

In a second show cause notice, the Clerk notified the appellant that her explanation regarding the timeliness of her petition for review was deficient in that it was not in the form of an affidavit or a statement signed under penalty of perjury, as directed in the first notice, and as required by regulation. See 5 C.F.R. § 1201.114(f). In response, the appellant refiled her previous explanation in affidavit form, and additionally explained that she had become ill with the flu shortly after receiving the initial decision, and that it had taken her several weeks to recover.

#### ANALYSIS

The Board has held that a petition for review is timely filed where a pro se appellant sends a letter to the regional office, rather than to the Board, raising objections to the initial decision within the 35-day time limit prescribed by 5 C.F.R. § 1201.114(d). See *Wilson v. U.S. Postal Service*, 38 M.S.P.R. 42, 44 (1988). Because the appellant's January 9, 1990, letter to the administrative judge raised objections to the initial decision, and was mailed within the Board's 35-day

time limit, we find that it constituted a timely filed petition for review. See *id.*

Turning to the merits of the appellant's petition, she does not dispute that the statute precludes OPM from honoring a designation of beneficiary that is received by OPM after the individual's death. She instead questions OPM's assertion that it did not receive her father's designation of beneficiary until May 18, 1989, nine days after her father's death. The appellant expresses her belief that OPM received the document prior to May 9, but that it sat on someone's desk for a substantial period before it was marked as received. The appellant has adduced no evidence to support this claim, however, either in the regional office proceeding or with her petition for review. Her contention thus constitutes mere disagreement with the administrative judge's fact findings and does not warrant review. See *Weaver v. Department of the Navy*, 2 M.S.P.R. 129, 133-34 (1980), review denied, 669 F.2d 613 (9th Cir. 1982) (per curiam).

#### ORDER

This is the Board's final order in this appeal. The initial decision in this appeal is now final. 5 C.F.R. § 1201.113(b).

#### NOTICE TO APPELLANT


You have the right to request the United States Court of Appeals for the Federal Circuit to review the Board's final decision in your appeal if the court has jurisdiction. See

5 U.S.C. § 7703(a)(1). You must submit your request to the court at the following address:

United States Court of Appeals  
for the Federal Circuit  
717 Madison Place, N.W.  
Washington, DC 20439

The court must receive your request for review no later than 30 calendar days after receipt of this order by your representative, if you have one, or receipt by you personally, whichever receipt occurs first. See 5 U.S.C. § 7703(b)(1).

FOR THE BOARD:

  
Robert E. Taylor  
Clerk of the Board

Washington, D.C.